

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

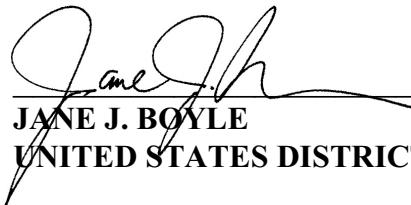
NAOMI GARZA, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. 3:05-CV-1554-B
§ ECF
CITY OF ENNIS, §
§
Defendant. §

MEMORANDUM ORDER

Before the Court is Defendant City of Ennis' Motion to Strike the Plaintiffs' First Amended Complaint (doc. 21), filed October 21, 2005. According to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff may amend her complaint once as a matter of course at any time before a responsive pleading is served. Here, Defendant filed a Motion to Dismiss before Plaintiff amended her Complaint; however, the Fifth Circuit is clear that a motion to dismiss is not considered a "responsive pleading" under Rule 15. *McKinney v. Irving Indep. Sch. Dist.*, 309 F.3d 308, 315 (5th Cir. 2004). Therefore, Plaintiff was permitted to file her Amended Complaint as a matter of course and did not need leave of court. As such, the Court **DENIES** Defendant's Motion. The Court makes no ruling on whether Plaintiff has stated a claim against the new defendants; instead, reserving such ruling for a Motion to Dismiss, if appropriate.

SO ORDERED.

SIGNED November 8th, 2005



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

